

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

MICROSOFT'S 4/20/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED FOR:
Friday, May 4, 2012**

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

I. RELIEF REQUESTED

Pursuant to Local Civil Rule 5(g) and paragraphs 2(a) and 8 of the protective order entered in this case, Microsoft respectfully seeks leave to file under seal the following documents:

- (1) Exhibits 1, 2 and 6 to the Declaration of Christopher Wion in Support of Microsoft's Motion for Summary Judgment of Breach of Contract (the "4/20/12 Wion Declaration"); and
- (2) Limited portions of Microsoft's Reply in Support of Motion for Summary Judgment of Breach of Contract ("Microsoft's Reply").

MICROSOFT'S 4/20/12 MOTION TO FILE
DOCUMENTS UNDER SEAL - 1

No. C10-1823

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1 Microsoft seeks to file the foregoing materials under seal because they contain
 2 information that has been identified either by Motorola or a third party as confidential business
 3 information under the terms of the operative protective order issued in this case. For these
 4 reasons, and as more fully described below, Microsoft respectfully requests permission to file
 5 the above-referenced documents under seal.

6 II. FACTS & AUTHORITY

7 A. The Operative Protective Order Requires Microsoft to File Motorola's and Third 8 Party Confidential Information under Seal.

9 Pursuant to the Protective Order issued by the Court on July 11, 2011, Microsoft is
 10 required to file under seal materials designated by Motorola or other third parties as
 11 Confidential Business Information¹, with such documents to remain under seal upon Court
 12 approval. Paragraphs 2(a) and 8 of the Protective Order govern the filing of documents under
 13 seal. Paragraph 2(a) provides:

14 Any information submitted in pre-trial discovery or in a pleading, motion, or
 15 response to a motion in this action, either voluntarily or pursuant to order, and
 16 which is asserted by a supplier to contain or constitute Confidential Business
 17 Information shall be so designated by such supplier in writing...and shall be
 18 segregated from other information being submitted. Documents shall be clearly
 19 and prominently marked on their face with the legend: "[SUPPLIER'S NAME]
 20 CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO
 PROTECTIVE ORDER" or a comparable notice. During the pre-trial phase of
 this action, such information, whether submitted in writing or in oral testimony,
 shall be disclosed only *in camera* before the Court and shall be filed only under
 seal, pursuant to Rule 5(g) of the Local Civil Rules of the United States District
 Court for the Western District of Washington.

21 Paragraph 8 likewise provides that:

22 Any Confidential Business Information submitted to the Court in connection
 23 with a motion or other proceeding within the purview of this action shall be

24 ¹ "Confidential Business Information" is defined in the parties' Protective Order as "information which has not
 25 been made public and which concerns or relates to the trade secrets, processes, operations, style of work, or
 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories,
 amounts or source of any income, profits, losses, or expenditures." Protective Order Regarding the Disclosure
 and Use of Discovery Materials (ECF No. 72), ¶1.

submitted under seal pursuant to paragraph 2 above.

Id., at ¶ 8.

The Federal Rules of Civil Procedure recognize that courts may permit parties to file “trade secrets or other confidential research, development, or commercial information” under seal. Rule 26(c)(1)(G) and (H). District courts “are in the best position to weigh the fairly competing needs and interests of the parties affected by discovery,” in crafting the appropriate treatment of documents for which protected treatment is requested. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S. Ct. 2199 (1984); *see also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211-1212 (9th Cir. 2002). Additionally, pursuant to Local Rule CR 5(g)(2), the Court may seal a document filed in support of a dispositive motion upon a “compelling showing that the public’s right of access is outweighed by the interests of the public and the parties in protecting the court’s files from public review.” *Id.*; *see also Kakakama v. City and Cnty of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

B. Exhibits 1, 2 and 6 to the 4/20/12 Wion Declaration Should Be Filed under Seal

Exhibits 1, 2 and 6 to the 4/20/12 Wion Declaration contain information that has been designated by Motorola or third-party MPEG LA, LLC, as confidential information under the terms of the Protective Order entered in this action. Accordingly, Microsoft is required to file such documents under seal.

Exhibit 1 is a copy of a license agreement between Motorola Mobility, Inc. and VTech Communications, Inc., that the Court previously authorized to be filed under seal. (*See* Order dated 2/24/12, ECF No. 187).

Exhibit 2 consists of excerpts from the deposition of Motorola employee Timothy M. Kowalski, taken on April 4, 2012 in this matter. Motorola has designated the deposition as confidential under the terms of the Protective Order.

Exhibit 6 is an email exchange that includes an email from Motorola employee Paul Bawel, dated November 7, 2003, produced in this matter by MPEG LA, LLC, in response to a MICROSOFT’S 4/20/12 MOTION TO FILE DOCUMENTS UNDER SEAL - 3

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subpoena issued by Microsoft. MPEG LA designated the document as confidential under the terms of the Protective Order.

C. Limited Portions of Microsoft's Reply Brief Should be Sealed to Avoid Disclosing Confidential Information Protected by the Protective Order

Microsoft's Reply Brief includes references to and descriptions of the confidential information contained in Exhibits 1, 2 and 6 to the 4/20/12 Wion Declaration. Microsoft's Reply Brief also refers to and describes confidential information submitted by Motorola in opposition to Microsoft's Motion for Summary Judgment, which information is the subject of a separate motion to seal filed by Motorola on April 13, 2012 (ECF No. 271). Accordingly, Microsoft is publicly filing a version of its Reply Brief that redacts all such material that has been designated as confidential information under the terms of the Protective Order.

III. CONCLUSION

Microsoft has filed the above-referenced documents under seal based on its good faith belief that such material qualifies for protection under the terms of the Protective Order and the applicable Court rules. A [Proposed] Order Granting Microsoft's 4/20/12 Motion to File Documents Under Seal has been submitted herewith.

DATED this 20th day of April, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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